

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
The Telephone Consumer)
Protection Act of 1991)
)

CC Docket No. 92-90

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COMMENTS

BellSouth Corporation ("BellSouth"), for itself and on behalf of its affiliated companies, hereby responds to the Notice of Proposed Rulemaking ("Notice") recently released in this proceeding.¹

The Telephone Consumer Protection Act of 1991 (TCPA), Pub. L. 102-243, 105 Stat. 2394 (1991), was enacted to protect the privacy and other interests of telephone subscribers from perceived abusive practices associated with the rapidly expanding use of telemarketing techniques by businesses and other organizations. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., by adding a new section 47 U.S.C. § 227, which among other things restricts the use of automatic telephone dialing systems and other techniques for telemarketing purposes.

By its Notice, the Commission proposes regulations to implement the TCPA and tentatively defines the contours of

¹ The Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking, CC Docket No. 92-90, FCC 92-176 (rel'd April 17, 1992).

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statutorily permissible exemptions to the prohibitions of the statute. BellSouth offers the following observations on the Commission's proposals.

I. The Exceptions to Section 227(b)(1)(A) Should be Read Broadly.

The TCPA prohibits the use of automatic telephone dialing systems or artificial or prerecorded voice announcements on calls to any emergency telephone line,² to the telephone line of a guest or patient room of a health care facility, to a paging service or other specialized mobile radio service, or to any service for which the called party is charged for the call, unless the call is made for emergency purposes or made with the prior express consent of the called party.³ The Commission's proposed rules virtually restate this statutory provision.⁴

As the Commission observed in the Notice, the legislative history of the TCPA shows that it was not the intent of Congress that the "emergency purpose" and "prior consent" exemptions be construed narrowly. For example, the legislative history clearly reveals that the statute should

² The TCPA defines emergency lines to include doctors' offices and other health care facilities, poison control centers, and fire protection and law enforcement agencies. 47 U.S.C. § 227(b)(1)(A)(i).

³ 47 U.S.C. § 227(b)(1)(A).

⁴ Notice at Appendix B, proposed rule 64.1100(a)(1).

not be interpreted or applied in a manner that would constrain the use of voice store and forward message delivery technologies.⁵ Similarly, the history reveals an intent to permit automated calls for the purpose of notifying customers of potential power outages, maintenance, or termination.⁶ Consistent with this example provided by Congress, BellSouth urges the Commission also to recognize automated calls regarding the installation, maintenance, or termination of telephone service as emergency situations for purposes of the exemption. Alternatively, the Commission should acknowledge that by having subscribed to telephone services, customers have an understanding and expectation that they will receive notification prior to any disconnect, and thus have granted prior express consent to receiving such calls.⁷

Similarly, BellSouth believes it can, under the TCPA's prior consent exception, use autodial equipment and prerecorded messages to deliver messages to its cellular

⁵ Congressional Record, November 26, 1991, H 11311-12. Alternatively, the Commission should clarify that the Act applies to the individual initiating the call that utilizes store and forward technology, not to the intermediate provider of that capability.

⁶ Congressional Record, November 26, 1991, H 11310.

⁷ In at least three jurisdictions, BellSouth is required by tariff to notify customers before disconnecting service. At a minimum, tariff provisions should constitute prior express consent to such notification.

customers in instances where there is no charge to the cellular customer. In certain specialized instances, such as cellular roaming service, autodialer and prerecorded messages may be essential to providing the service to which the customer has subscribed.⁸

Further, the Commission should clarify that calls placed utilizing systems such as BellSouth's Automated Alternate Billing System (AABS)⁹ are not prohibited by Section 227(b)(1)(A). With such calls, the called party may interact with prerecorded voice prompts to indicate, for example, whether he or she will accept a collect call. During AABS call processing, no commercial message is delivered, nor is any call completed or billing initiated without a positive response by the called party. Clearly,

⁸ For example, with roaming cellular service, subscribers may automatically receive a recorded message regarding available roaming service when they "roam" into an operating cellular territory outside their home service area. Such notification is an inherent aspect of the roaming service extended to customers as a part of the service they purchased. The customer is not charged for these messages and therefore their delivery does not run afoul of the intent of the TCPA to guard against unwanted calls for which the called party must pay.

⁹ Eighty-two percent of BellSouth's customer dialed alternate billed 0+ calls are handled by BellSouth's AABS without operator intervention. AABS is a significant cost savings program that benefits both BellSouth and the consumer by significantly holding down operator services costs. The TCPA should not adversely impact AABS or any customer initiated call placed by an operator services system.

these calls are not telemarketing calls that the legislation was intended to affect.

Finally, in taking action with respect to Section 227(b)(1)(A), the Commission should recognize the frequent practical impossibility of distinguishing the type of user on a terminating call. Imposition of overly strict standards in this area could cause service providers to withdraw or withhold publicly beneficial services for fear of violating this section. BellSouth encourages the Commission to minimize this potential chilling effect on new services by stating that it will interpret the "emergency" and "prior consent" exceptions broadly.

II. The Proposed Exceptions to Section 227(b)(1)(B) Appear Reasonable.

The TCPA also prohibits the initiation of any telephone call to a residential telephone line using an artificial or prerecorded voice to deliver a message without the prior consent of the called party, unless the call is initiated for emergency purposes or is exempted by rules adopted by the Commission. In the Notice, the Commission has proposed to exempt calls not made for a commercial purpose, made for a commercial purpose but not including transmission of an unsolicited advertisement, made to a person with whom the caller has a prior or current business relationship, or made by a tax exempt nonprofit organization.

BellSouth believes that the exemptions proposed by the Commission are consistent with those exemptions contemplated

by Congress and are in the public interest. The exemptions appear to provide a reasonable balance between the privacy expectations of residential customers and the public benefits to be derived from efficiencies associated with such communication techniques.¹⁰

BellSouth believes that non-commercial calls, as well as commercial calls that do not transmit unsolicited advertising will continue to play an increasing role in the distribution of information in our society. Similarly, commercial calls to existing business customers, such as calls to follow-up on new orders, can be efficiently utilized to improve service responsiveness to customers in today's quality oriented environment. The Commission's proposed rules seem to strike a fair balance between those calls that called parties might find most useful and those calls that customers find most irritating and offensive.¹¹

III. Both the Database and Voluntary Restriction
Alternatives Have Merit as Means of Restricting
Unwanted Telephone Solicitations.

Finally, the TCPA directs the Commission to develop means to provide residential telephone subscribers with an opportunity to avoid receiving telephone solicitations. In

¹⁰ For this reason, the Commission should make the exceptions regarding calls to residential customers equally applicable to calls to cellular customers.

¹¹ See, P.L. 102-243, Senate Report No. 102-178, 1991 U.S. Code Cong. and Admin. News 1972.

response, the Commission has proposed in its Notice five potential mechanisms to achieve that result: national or regional databases of persons who object to receiving solicitations, network technologies that enable called parties to avoid calls from certain numbers, industry based or company generated "do not call me" lists, special directory markings, and time of day restrictions.

While recognizing that telephone solicitation has become bothersome to some individuals, BellSouth believes the Commission is correct in concluding that it is not in the public interest to eliminate telephone solicitations entirely. From the available solutions, the Commission must strive to choose the method that best balances the needs of individuals to restrict unwanted solicitations with the overall cost to society for imposing those restrictions.

With respect to costs, BellSouth firmly believes that whatever system is developed from this proceeding, the users of telemarketing techniques must be the bearers of the related costs. In no instance should it be assumed that the local exchange company is the party which should bear the burden of administering or implementing a national or regional solicitation prevention program. Of course, to the extent that BellSouth utilizes telemarketing techniques in providing services to its customers, BellSouth stands ready to participate with other telemarketers in bearing its fair share of the costs of such a program.

With respect to a database solution, BellSouth has had only limited involvement with the database administered by the State of Florida's Department of Agriculture and Consumer Services. On an annual basis, BellSouth delivers a monthly bill insert concerning the existence of the program to its customers. BellSouth includes similar information in its white pages directories. Customers inquiring about the non-solicitation database are referred to the State's 800 number. BellSouth has no information concerning the cost of administering the program or its effectiveness. BellSouth believes the Florida experience could be valuable in assessing the costs and effectiveness of a national or regional database solution.

Current and near-term network technologies do not appear to offer either a workable or a practical solution. As the Commission recognized, it is likely that all telemarketers would have to be assigned to the same telephone prefix and then all end offices equipped with the capability to recognize and block calls with that prefix. Even assuming that the telephone numbering plan and necessary network technology could be rapidly implemented to accommodate this solution, such an undertaking could prove quite costly.

Meanwhile, the success of such an arrangement would be wholly dependent on telemarketers identifying themselves and subscribing to telephone services with the appropriate

prefix. Self-identification in these instances could be extremely difficult since, for many firms, telemarketing is not the firm's primary activity. In many instances, telemarketing is merely a secondary function to other responsibilities. Where use of telemarketing is a secondary activity, particularly for small businesses, the need and desire to utilize telemarketing techniques could change frequently.¹²

BellSouth also believes that special directory markings would be of little utility in curtailing abusive or unwanted telemarketing solicitations.¹³ Many, if not most, telemarketing solicitations originate outside the locality of the called party. In any event, telemarketers largely rely upon specialized marketing lists, rather than telco provided directories to develop calling lists. Finally, specialized directory listings also fail to give non-published and private listing customers an equal opportunity to restrict bothersome solicitations.

¹² Some firms use telemarketing as a way to utilize employees during off-peak business periods. These periods may be during certain hours of the day or for only a few days a year. Requiring such entities, especially smaller businesses, to have specialized service arrangements could negate the value of this efficient utilization of human resources.

¹³ BellSouth provided a "no sales solicitation calls" directory listing in the state of Florida during the period from October 1, 1987 to October 1, 1990. The tariffed offering proved to be largely ineffective in reducing unwanted solicitation and was withdrawn.

The option involving the voluntary implementation of industry based or company specific "do not call" lists has definite administrative and cost advantages. Moreover, the Direct Marketing Association already maintains for the benefit of its members a list of customers who prefer not to receive telephone solicitations. BellSouth believes this method best ensures that the costs of implementation fall squarely on the firms utilizing telemarketing techniques. While voluntary implementation may not totally curb all abusive solicitation practices, it will likely offer consumers more control and flexibility in restricting unwanted calls and will do so in the most efficient manner.¹⁴

CONCLUSION

For the reasons stated above, BellSouth supports the Commission's proposed regulations to implement the prohibitions and exemptions on autodialers and prerecorded messages and encourages the Commission to interpret the "emergency purpose" and "prior consent" exceptions broadly. BellSouth also encourages the Commission to ensure that

¹⁴ See, e.g., comments of Congressman Cooper during the House floor debate on the final version of S. 1462, later the TCPA:

I think the company specific do-not-call approach offers consumers greater choice. To me, it seems more efficient in terms of implementation and the lag times required to implement it, as compared to the national database.

Congressional Record, November 26, 1991, H 11312-13.

carriers not be saddled with the cost and burden of providing network solutions to unwanted telephone solicitations when other less costly, but equally effective, means are available.

Respectfully submitted,
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